

CONFIDENTIALITY/RELEASE OF INFORMATION

A. Background

Regulations for the Rehabilitation Act of 1973, as amended (34 CFR 361.38), requires the state agency to ~~adopt~~ and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. All personally identifiable information in the possession of IVRS is to be used only for purposes directly related to the rehabilitation of the individual. IVRS is also equipped to comply with Public Law 93-282, Confidentiality of Alcohol and Drug Abuse Patient Records, Iowa Code Section 228.1 on release of mental health information, Iowa Code Section 141.23 on release of HIV/AIDS information, and the Health Information Portability and Accountability Act (HIPAA).

B. Obtaining Client Information

1. Client will be informed that all personal information given or made available to IVRS in the course of administration of the Vocational Rehabilitation program will be held to be confidential. The use of personally identifiable information and records will be limited to purposes directly connected with the administration of the program.
2. Information will be obtained from service providers and cooperating agencies using a Release of Information form (R-407) signed by the client. A copy of all R-407 forms sent are retained in the casefile. Information providers will be assured that information received in this way will not be further released without the client's approval and permission from the vendor that generated the information or except in response to an order, subpoena, or summons issued by the court or other judicial body.
3. The client is to be informed that provision of personal information is voluntary to the extent that withholding such information does not interfere with the determination of eligibility or development of the plan. If pertinent and necessary information is withheld, it may be considered failure to cooperate and lead to case closure.
4. Tracking of information shared with other organizations will be kept in the case record according to HIPAA Rules.

C. Releasing Client Information

1. Discussion of information (with instructors and administrators of training programs in which the client is enrolled, employers and/or placement agents in connection with the training, employment or placement of the client) is considered necessary for administration of the program and is acceptable. Signed consent is needed only for clients with mental health problems, alcohol or drug abuse problems, or HIV/AIDS test

January, 2008



Iowa
**Vocational
Rehabilitation**
Services

information. See item D.1 of this section for special instructions. No disability specific information is shared beyond that allowed by the ADA without a release of information from the client.

2. Release of prior medical/psychological records is permissible with a release form completed and signed by the client along with permission from the vendor who completed the exam. This permission may be written or verbal. If the permission is given verbally, a note should be made on the HIPAA Tracking Form in the case file indicating the date and first name of person giving the permission.
3. When requested in writing by the client, all information must be made available for review by the client and/or his/her parent, guardian, or other representative.
 - a. If the client wishes to review the information in the area office, it will be reviewed in the presence of a IVRS staff member.
 - b. Medical, psychological or other information, which the state agency has determined might be harmful to the individual may not be reviewed directly by the individual, but must be provided through his or her chosen representative.
4. When copies of casefile information are requested, only those materials specified by the client in writing, along with permission from the vendor, may be released. Information may only be released after a release which is valid under Iowa law has been received (see Section F).
 - a. Copies of medical, psychological or other information which the state agency believes may be harmful to the individual may not be provided directly to the individual, but must be provided through his or her chosen representative.
 - b. Unless the release specifically authorizes the release of legally restricted types of material (mental health, drug and alcohol, and HIV/AIDS) this information cannot be released and this type of material should not be mentioned.
 - c. Information may be released only to those agencies and programs which have adopted regulations which assure that the information will be held confidential and used only for the purpose for which it has been provided.
 - d. All requests for information from closed casefiles are to be referred to the State Office, ATTN: Resource Manager for Professional Development.

January, 2008



Iowa
**Vocational
Rehabilitation**
Services

5. Client information will be released in response to a court order or valid subpoena issued by the court or other judicial body. (See Section G. for further clarification.)
6. All requests for client information from organizations, agencies, or individuals engaged in evaluation or research are to be forwarded to the State Office, Attention: Planning and Development Team. Each request will be evaluated as to its potential contribution to the field of rehabilitation and to the state agency, the staff time that would be required to respond, the complexity of the request, and the relative ease of retrieving the requested information. The team's recommendations will be forwarded to the Administrator for final disposition.

Personal identifying information will only be released with the prior written consent of the individual.

7. IVRS may release client information in response to law enforcement when the request is received in writing, signed by an appropriate official, stating that the information is required for an official investigation and citing the specific information required from the client's record. Information on drug and alcohol abuse, mental health, and HIV/AIDS information may only be released by way of an order of the court.
8. IVRS may release personally identifiable information in emergency situations to protect the individual or others when the individual poses a threat to the safety of self or others. A written request is not required, but all facts and circumstances must be recorded in the client's case.
9. The official exchange of necessary client information between the Disability Determination section and the Vocational Rehabilitation section will be considered as made for a vocational rehabilitation purpose and does not require express or written client consent. Only information generated by IVRS can be exchanged. See item E of this section (I-E-4) for release of information obtained from Disability Determination.
10. In instances where the counselor or supervisor feels that release of requested information to the client or a third party will seriously impede the willingness of the provider of that information to work with the agency in the future, the counselor or supervisor should refuse to supply the information and direct the request to the original source. It is also acceptable for the counselor or supervisor to approach the original source for permission to further release the requested information.
11. A release extending beyond 12 months can be issued for non-medical or non-psychological vendors for purposes of planning. Educational and

June, 2008



community rehabilitation program vendors may exchange vocational and educational progress information under a release that extends beyond 12 months.

D. Alcohol and Drug Abuse, Mental Health, and HIV/AIDS Information

(NOTE: For this section only, the ~~%client's~~ written consent refers only to the client, regardless of age. A parent or guardian is not an acceptable substitute, even for persons under 18 years of age.)

1. Information about a client's alcohol or drug abuse, mental health, or HIV/AIDS problems may not be released (verbally or in writing) without the written consent of the client and permission of the vendor that generated the report. The R-407 properly filled out and signed must be placed in the casefile before information concerning drug or alcohol abuse, mental health, or HIV/AIDS diagnosis or treatment is given to a prospective employer or placement agent.
2. These requirements apply even if the person seeking the information already has or knows the information, has official status or has obtained a subpoena. The person making the request is to be told that Federal or State Law prohibits release of casefile information relating to drug and alcohol abuse, mental health, or HIV/AIDS without the specific written consent of the client or an order of the court. If this statement is not accepted, the State Office is to be notified immediately so that they may refer it to a designated Assistant Attorney General.
3. Failure to observe these requirements is a violation of Public Law 93-282, Iowa Code Section 228.1, and Iowa Code Section 141.23.

E. Social Security Information

1. Information cannot be released without permission by the Social Security Administration and a signed release by the individual.
2. If it appears that the information may be harmful to the individual, the requested information may be copied and forwarded to the manager of the SSA District Office. The individual is to be directed to contact the district office. The manager has the prerogative of releasing, withholding or further action.
3. No information dealing with alcohol or drug abuse may be released by IVRS.

March, 2008



Iowa
**Vocational
Rehabilitation**
Services

4. When there is no signed consent and there is an actual or threatened subpoena, a call should be made immediately to Kansas City SSA Regional Office. The contact person is Theron Holt or John Gezich, 816/426-6185 or Fax 816/426-7684. Be sure to keep your supervisor informed at each stage.

F. Authority for Release of Information

1. IVRS Form R-407, when properly completed and signed, fulfills the requirements for release of alcohol and drug abuse, mental health, and HIV/AIDS information. Information about a person's diagnosis and disabling condition tends to permeate the casefile. Care must be taken not to release information that inadvertently reveals restricted information, unless the special release authorization is signed.
2. To be valid under Iowa law, a release directed to IVRS for client records must:
 - a. Be in writing and directed to the agency. (A person can be presumed to have given informed consent if the release is directed ~~To~~ Whom It May Concern, ~~To~~ Any and All, or other non-specific designators);
 - b. Give the name or title of the organization or individual to whom disclosure is to be made;
 - c. Include name and signature of the client;
 - d. Specify the extent or nature of the information to be disclosed. Drug and alcohol abuse, mental health, and HIV/AIDS information must be specifically cited to be included;
 - e. Include a statement that consent is subject to revocation at any time and specify the event or condition upon which it will expire without revocation; and
 - f. Show the date on which the consent was signed.
3. When properly completed, a general patient's waiver is an acceptable release of information form for all but the specially restricted types of information.

G. Subpoenas - Types and Conditions

1. Types:
 - a. Subpoena Ad Testificandum (usually simply called a subpoena): This is a process to cause a witness to appear and give testimony at a designated time and place.
 - b. Subpoena Duces Tecum: A subpoena which requires a person to appear at a designated time and place and produce a designated document which is in their possession and pertinent to the issue at hand.

January 2008



Iowa
Vocational
Rehabilitation
Services

2. Conditions

- a. Court subpoenas can be served by a law enforcement officer or by a person who then files an affidavit of service with the Clerk of Court.
 - (1) A mailed subpoena is not valid. When a court subpoena is delivered in this manner the requester of the information should be notified that we cannot comply in the absence of either a proper release of information or proper service of the subpoena.
 - (2) A court subpoena served by a person other than a law enforcement officer is not valid until filed with the Clerk of Court. The counselor should make sure this has been done before testifying or providing documents. (This is checked by calling the Clerk of Court's office.)
 - (3) A subpoena across state lines is not valid, unless it is a federal subpoena.
- b. Administrative boards and agencies, such as the Iowa Industrial Commission, have the legal authority to issue subpoenas, but they do not have the same mechanism for the filing of affidavits. These subpoenas will be considered valid by IVRS, regardless of how delivered (including mailed) when accompanied by a release of information signed by the client, which clearly indicates the client's approval of the counselor appearing and testifying (i.e. "The counselor may respond to the attached subpoena.")
- c. Some subpoenas will arrive with a letter indicating that if the casefile information is provided prior to a certain date the personal appearance is waived. Provide the information rather than appear only when you have a valid signed release of information.
- d. Mental Health information is protected under Iowa Code Chapter 228. Without a signed release it can only be disclosed by court order, not in response to a subpoena.
- e. Drug abuse and alcoholism information is protected under Federal Law (42 CFR Part 2). Without a signed release it can only be disclosed by court order, not in response to a subpoena.
- f. HIV/AIDS testing and treatment information is protected under Iowa Code Chapter 141.23. Without a signed release it can only be disclosed by court order, not in response to a subpoena.
- g. A subpoena must provide reasonable notice to the person required to appear. Reasonable notice is generally regarded to have been provided if the subpoena is served at least 24 hours prior to the required appearance. An earlier time can be agreed to by all the parties involved. Contact with the issuer may result in the negotiation of a more mutually acceptable time.
- h. You must always respond to a subpoena. If you feel the subpoena was not validly served or calls for the production of material restricted by law, you should immediately contact the issuer, citing your objection and desire to be released from the subpoena. Unless you are

January, 2008



Iowa
**Vocational
 Rehabilitation**
 Services

released from the subpoena, you must appear at the time and place indicated. If the subpoena calls for the production of a casefile, you must object to producing drug, alcohol, HIV/AIDS, or mental health information unless you have a court order directing you to produce it. Cite the laws mentioned in G. 2. d, e, and f, above as your reason for being asked to be released from the subpoena.

Be sure to keep your supervisor fully apprised of all subpoena and testimony actions.

H. Inaccurate or Misleading Information

An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated state unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.

I. HIPAA Privacy Officer

For purposes of the Health Information Portability and Accountability Act, the Area Office Supervisor is the designated Privacy Officer. Staff must document in the file any covered information that is released.

J. HIPAA Requirements

Casefiles are not to be taken out of the office overnight. If casefiles are taken out of the office during work hours, they must be in the counselor's possession at all times, or in a locked briefcase, file or trunk.

February, 2008



Iowa
Vocational
Rehabilitation
Services